IN THE HIGH COURT OF DELHI

FAO.No.468/2002

Union of India ..... Petitioner
! through: Ms.Anjana Gosain, Advocate

VERSUS

$ The Tata Iron & Steel Co.Ltd. ..... Respondent
^ through: Mr.Sandeep Mittal, Advocate.
Ms.Meena Chaudhary Sharma, Adv.

% DATE OF DECISION: 26.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Heard for disposal.

2. Union of India is aggrieved by the order passed by the Railway Claims Tribunal directing Union of India to pay Rs.1,40,562/- to the respondent together with interest thereon @ 9% per annum.

3. Claim was lodged by the respondent alleging that on 10.7.1994 it had booked 6 bundles of GRIP bars (untwisted) weighing 55.1 Mts for carriage by the railway from the siding at Tata Nagar to Tuglakabad railway station and in respect thereof

railway receipt No.071798 was issued. It was stated that when the consignment reached Tuglakabad railway station, before taking delivery a notice of re-weighment was given to the railway authority by the respondent. Railway Authorities refused to re-weigh the consignment. The respondent went to an independent agency namely PHD Chambers of Commerce & Industry with a request that the consignment be re-weighed. Surveyor was appointed by PHD Chambers of Commerce & Industry. He re-weighed the consignment and detected it to be short by 10.850 MT. At the trial respondent led evidence of K.P.Kapoor and C.V.Vishwanathan who successfully proved that when the consignment was delivered to the railway authorities weighment was witnessed by railway staff. They also proved the notice served upon the railway authorities being Ex.AW-2/1 asking for re-weighment when good reached Tuglakabad. The witnesses also proved that the railway authorities refused to re-weigh the consignment. The survey report of the surveyor was proved as Ex.AW-3/1.

4. The railway authorities disputed the liability stating that the RR contained an inscription "*said to contain*". It was urged that said notation on the RR shows that the weight noted in the RR was as per discloser by the consignor and that there was no proof that the consignment weighed 55.1 MT.

5. The Tribunal has held that notation "*said to contain*" relates to description of the goods and that there is an independent column under the caption "*remarks*" in the RR wherein following has been noted : "*Weighment witnessed by railway staff*".

6. Therefrom the Tribunal has opined that the notation "*said to contain*" cannot relate to weighment of goods but relates to the description thereof.

7. Tribunal has therefore opined that since railway authorities refused re-weighment of the consignment at point of delivery the consignor had no option but to seek independent weighment through a neutral surveyor. Report Ex.AW-3/1 has been accepted by the Tribunal as good evidence.

8. Learned counsel for the appellant refers to a decision of the Supreme Court reported as 1969 (3) SCC 112 *Hari Sao & Anr. Vs. The State of Bihar*.

9. I have perused the said decision. It hardly helps the cause of the appellant. The Supreme Court considered the erstwhile Section 73 of the Railways Act. The corresponding provisions relatable to Section 93 of the Railways Act,1989.

10. Suffice would it be to state that Supreme Court had held that for loss or destruction of goods the railway authorities can be relieved from the obligations only upon proof that they

used reasonable foresight and care in the carriage of the goods.

11. I concur with the view taken by the Tribunal that the notation "*said to contain*" in the RR relates to description of goods and that the noting against the remarks column related to the weighment being witnessed by the railway staff.

12. The requirement of disclosing nature of goods is on account of differential tariffs framed by the railway authority pertaining to different kinds of goods.

13. As regards the issue of quantity short delivered, suffice would it be to state that the railway authority did not participate in the joint measurement nor acceeded to the request of the consignor to re-weigh the consignment. Thus, the survey report of the independent surveyor i.e. Ex.AW-3/1 has to be accepted.

14. I find no merits in the appeal. The appeal is dismissed.

15. The amount, if any, lying in deposit in this court be released in favour of the respondent forthwith.

16. Record of the Tribunal be returned forthwith.

November 26, 2007 **PRADEEP NANDRAJOG, J.**
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